

(2015) 03 KAR CK 0437

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 25659 of 2011 [LAC]

The Special Land Acquisition Officer

APPELLANT

Vs

Buddu Mani Gowda and Others

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 18(1), 4(1), 54(1), 6(1)

Citation : (2015) 03 KAR CK 0437

Hon'ble Judges : B.S. Patil, J;B. Veerappa, J

Bench : Division Bench

Advocate : Veena Hegde, HCGP, for the Appellant; J.S. Shetty, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Veerappa, J.

1. The above MFA is filed by the State Government/Special Land Acquisition Officer, against the judgment and award dated 09.07.2010 made in LAC No. 304/2006, on the file of the Senior Civil Judge, Kumta, fixing the market value of the lands, described in the reference application, at Rs. 19,669/- per gunta, with all statutory benefits, under the provisions of the Land Acquisition Act, 1894 (for short "the Act").

2. It is the case of the claimants that, the predecessors in-title of claimant/respondent Nos. 1(1) to 1(3) were the owners of Sy. No. 115 measuring 1 acre 8 guntas of Bognbail village in Ankola Taluk and the said land was acquired for the benefit of respondent No. 4/Executive Engineer, O and M Division, K.E.B., Karwar, for establishment of power grid and accordingly, issued preliminary notification under the provisions of Section 4(1) and 6(1) of the Act and the Land Acquisition Officer passed the award dated 12.04.1999 awarding compensation of Rs. 1,500/- per gunta.

3. Being dissatisfied with the quantum of compensation awarded by the Land

Acquisition Officer, the claimants filed an application under the provisions of Section 18(1) of the Act, before the Land Acquisition Officer, with a request to refer the matter to the Civil Court for better adjudication and redetermination of the compensation. Accordingly, the reference application was sent to the Civil Court (Sr.Dn.), Karwar on 01.11.1999, which was renumbered as LAC No. 119/1999. Subsequently, LAC No. 119/1999 was transferred to the Court of Senior Civil Judge, Kumta and numbered as LAC No. 304/2006.

4. The claimants have appeared through their counsel and contended that the compensation paid to him is very low and he has received the amount under protest and hence, sought for allowing the claim application. On the other hand, respondents though entered appearance and contested the claim, have not field objections before the reference Court.

5. Upon considering the pleadings, the reference Court framed the following points:

"1. Whether the claimants prove that the market value of the acquired land is higher than the market value fixed by the Land Acquisition Officer as on the date of publication of the Notification U/S. 4(1) of the Act? If yes, what is the market value?

2. Whether the claimants prove that they are entitled for higher compensation than the compensation awarded by the Land Acquisition Officer in respect of the structures existed in the acquired lands?

3. Whether the claimants are entitled for enhanced compensation?

4. What order?"

6. In order to establish their claim, claimant No. 1(3) got herself examined as PW-1 and got marked Exs. P-1 to 7. On the other hand, the Assistant Commissioner, Kumta, got himself examined as RW-1 and got marked Ex. R-1 for the respondents.

7. The reference court, after considering the entire material on record, by the impugned judgment and award dated 09.07.2010, has fixed the market value of the acquired land at Rs. 19,669/- per gunta with all statutory benefits, as per the Act. Against the said judgment and award, present appeal is filed by the State.

8. We have heard the learned counsel for the parties to the lis.

9. Smt. Veena S. Hegde, learned HCGP, has contended that the impugned judgment and award passed by the reference Court is illegal and requires to be set aside by this Court. It is further contended that the impugned judgment and award passed by the reference Court is perverse, as compensation for both the lands and trees cannot be granted; the reference Court ought to have rejected the evidence of the claimant, since, she had not produced any documents regarding the agricultural income of the property in question and the judgment and award passed by the reference Court is contrary to the canons of the Land

Acquisition Act, as the reference Court has adopted all the three methods namely Comparative Sale price, escalation and capitalisation method, etc. Therefore, she has sought to set aside the impugned judgment and award passed by the Civil Judge.

10. Sri. J.S. Shetty, learned counsel for respondent/claimant Nos. 1(1) to 1(3), sought to justify the impugned judgment and award passed by the Civil Judge.

11. We have given our thoughtful consideration to the rival contentions urged by the learned counsel for both the parties and perused the entire material on record.

12. The admitted facts are that, the land of the claimants has been acquired by the State Government on behalf of respondent No. 4/Executive Engineer, O. and M. Division, Karwar, for establishment of Power Grid by issuing preliminary notification and final notification under the provisions of Sections 4(1) and 6(1) of the Act. Accordingly, the Land Acquisition Officer has passed the award on 12.04.1999, fixing the market value of the land acquired at Rs. 1,500/- per gunta.

13. It is also an admitted fact that the beneficiary has not filed any appeal against the impugned judgment and award passed by the learned Civil Judge. The learned Civil Judge after considering the entire material on record has recorded a categorical finding that the claimants have proved that the market value of the acquired land is higher than the market value fixed by the Land Acquisition Officer as on the date of publication of Notification under the provisions of Section 4(1) of the Act.

14. Admittedly, in the present case, Section 4(1) notification was issued in the year 1997 and the reference Court has come to the conclusion that the market value of the acquired land in the year 1998 would be Rs. 19,669/- per gunta and in view of the law declared by the Hon"ble Supreme Court in the case of GENERAL MANAGER, OIL AND NATURAL GAS CORPORATION LTD. v. RAMESHBHAI JIYANBHAI PATIL AND ANOTHER, 2008 AIR SCW 5947, escalation has to be calculated by cumulative increase method, and flat rate increase method should not be adopted. Therefore, by calculating the escalation, as per the cumulative increase method, the market value has been determined as under:--

15. Admittedly, in the present case, the notification was issued on 01.01.1998; the market value of the land as in the year 1997 is taken as market value of the land. Therefore, the market value of the present acquired land as on the date of the notification would be Rs. 19,668 = 86, which is rounded off to Rs. 19,669/-.

16. Learned Civil Judge has also recorded a finding that, other method is the "opinion of the experts". The opinion of the experts was not available to fix the market value of the land. The Special Land Acquisition Officer has not relied upon this method to fix the market value. The other method is the capitalisation

method. The land consists of trees. Therefore, the tree valuation can be relied to fix the market value. Learned Civil Judge has further held that Valuation of the Horticultural trees, as made in LAC No. 11/1993 by the Addl. Civil Judge (Sr.Dn.), Karwar, which has attained finality, could be adopted. It has held that same valuation could be fixed in this case also, as the weather, humidity, ram-fall, soil condition, yield and market price were also same in both Karwar and Kumta Taluk; the agricultural lands situated in Kumta, Ankola and Karwar Taluk have similar potentiality, weather and rainfall; there is Arabian Sea on the one side and Sahyadri Hillock on the other side. Hence, fixing the market value of the trees by adopting the flat rate increase method has been found to be just and fair by the reference Court. Therefore, the tree valuation by giving escalation at 5% per annum for 11 years has been arrived at as under:

17. Accordingly, the learned Civil Judge has held that the claimants were entitled for compensation either for trees or the land whichever was higher, because the claimants could choose the valuation which is beneficial to them. Therefore, learned Civil Judge has held that the market value of the land fixed by the Land Acquisition Officer was lower than the actual market value of the land. Therefore, he has proceeded to pass the impugned judgment and award. The same is in accordance with law. We find no grounds to interfere with the impugned judgment and award passed by the learned Civil Judge, in exercise of powers under the provisions of Section 54(1) of the Act.

Accordingly, the appeal is dismissed.